

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.28768 OF 1995

DATE: 31st October 2006

Between:

S.Prasad, s/o S.Babu Rao, aged 46 years,
R/o D.No.66/2/114, Sreeramnagar,
Malkapuram, Visakhapatnam.

...Petitioner.

And

1. The Visakhapatnam Port Trust,
rep. by its Chairman, Visakhapatnam
and another.

...Respondents.

* * *

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring action of the second respondent in imposing punishment of compulsory retirement with effect from 24.01.1994 by his proceedings No.E/M/PC/4252/688, dated 24.1.1994 and as confirmed by the first respondent in his proceedings No.A1/Apppeal/Mech./2825/94, dated 06/6/1994, as arbitrary and illegal and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. It appears that the petitioner served as a Khallasi (shore) F.C. Section in the first respondent organization for more than 23 years. While so, a charge memo dated 12.8.1993 was issued alleging that the petitioner absented from duties unauthorizedly

during the spells from 27.01.1993 to 30.01.1993, 26.4.1993 to 30.4.1993, 03.5.1993 to 22.5.1993 and from 16.6.1993 to 29.6.1993, and thus, he had violated Regulation 3(i) of Visakhapatnam Port Employees (c) Regulations, 1964. The petitioner submitted a detailed explanation on 27.8.1993 stating that his wife and children fell ill during the relevant time, and therefore, he lost his mental balance and could not inform his absence in time and prayed for mercy to give a chance to improve himself. After conducting an enquiry, the disciplinary authority passed an order dated 24.01.1994 compulsorily retiring the petitioner from service. Aggrieved by the same, the petitioner carried the matter in appeal before the appellate authority. The appellate authority, under the Visakhapatnam Port Employees' (Classification, Control & Appeal) Regulations, 1968, dismissed the appeal by an order dated 06.6.1994, confirming the order passed by the disciplinary authority. Aggrieved by the same, the present writ petition is filed.

3. No counter is filed by the respondents.

4. There is no necessity of going into all the details. It is suffice to notice the order passed by the disciplinary authority which is very cryptic and does not satisfy the convention of passing an order of dismissal which reads as under.

“ The undersigned has carefully considered the representation submitted by Shri S.Prasad, Kh.Sh. F.C. Section, vide reference 6th cited, in response to the show cause notice issued to him vide reference 5th cited,

proposing to impose on him the penalty of compulsory retirement from service found the same not satisfactory.

The reasons offered by him in the representation are not convincing and hence not acceptable. He did not bring out any new points in the representation. The undersigned, therefore, comes to the conclusion to confirm the penalty proposed in the said show cause notice.

Accordingly Shri S.Prasad, Kh.Sh. on pay of Rs.1040/- in the time scale of pay of Rs.1040-1425 is compulsorily retired from service w.e.f. the date of issue of these proceedings.

The Appellate Authority in this case is the Chairman, V.P.T. and the appeal if any should be submitted to him within 45 days from the date of receipt of these proceedings by Shri S.Prasad.

The receipt of these proceedings should be acknowledged by Shri S.Prasad.”

The Appellate Authority also passed a cryptic order, which reads as under.

“ Sri S.Prasad has been working as Khallasi (Sh.) in F.C. Section of Mechanical Engineering Department. The Chief Mechanical Engineer (Disciplinary Authority) took disciplinary action against Sri S.Prasad and imposed on him the penalty of “Retired from service compulsorily w.e.f. 25.1.94” as a disciplinary measure, for his unauthorized absence to duty.

Against the above penalty awarded by the Chief Mechanical Engineer (Disciplinary Authority), Sri S.Prasad has preferred an appeal dt.16.3.94 to the undersigned.

The undersigned having carefully considered the facts of the case and after perusal of the relevant records, finds that Sri S.Prasad has a bad service record and there are no convincing grounds to interfere with the orders of Disciplinary Authority and therefore rejected the appeal.

In the result, the appeal dt.16.3.94 of Sri S.Prasad, Ex.Khallasi (Sh.), F.C. Section of Mechanical Department, is hereby rejected and the punishment awarded by the Chief Mechanical Engineer (Disciplinary Authority) is confirmed."

5. I am of the opinion that the order passed by the Disciplinary Authority and further confirmed by the Appellate Authority does not reveal that the petitioner was in the habit of absenting himself earlier. The four spells of 4 days, 5 days, 20 days and 14 days had fallen from 27.01.1993 to 29.6.1993. The petitioner, in fact, admitted his absence saying that his wife and children were ill, therefore, due to domestic problems he was mentally upset and he could not inform his absence to the authorities. Instead of taking a lenient view, respondents have adopted a pedantic posture by retiring the petitioner compulsorily from the service with effect from 25.01.1994 at the age of 45 years. There are no reasons recorded for imposing such a harsh punishment of compulsory retirement of a person of 45 years age.

6. I am of the opinion it cannot be said that the charges are not proved since the petitioner himself has admitted and sought for mercy. It all happened within a span of just six months. The total absence of all the four spells comes to (43) days, therefore,

retiring the petitioner compulsorily from service is unwarranted and very harsh punishment. In the facts and circumstances the petitioner deserves to be punished with a lesser punishment than that of compulsory retirement. However, now the petitioner attained the age of retirement, therefore, remitting the matter for re-consideration would not serve any purpose. Instead of remanding the matter it is better to give a quietus at this stage itself. Therefore, inflicting punishment stoppage of five increments with cumulative effect would be a sufficient punishment.

7. The writ petition is allowed accordingly setting aside the impugned order and the respondents are directed to reinstate the petitioner into service if not already attained superannuation or treat that the petitioner has been reinstated into service and retired on attaining the age of superannuation and the petitioner is entitled to half of back wages with continuity of service and all other attendant benefits.

C.V.RAMULU, J.

Date: 31st October 2006.

BSB